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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

HAN, JASON

ART UNIT	PAPER NUMBER
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2875

DATE MAILED: 08/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/786,995

Applicant(s)

VANDERSCHUIT, CARL R.

Examiner

Jason M. Han

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14, 18-24 and 35-47 is/are pending in the application.
- 4a) Of the above claim(s) 39-47 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14, 18-24 and 35-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 39-47 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to Claims 1-14 and 18-24 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-2 and 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patz et al. (U.S. Patent 5800490) in view of Parker et al. (U.S. Patent 5568964).
3. With regards to Claim 1, Patz discloses a therapeutic device including a container [Figure 1: (20, 55a)] having a pocket [Figure 1: (55b, 60)] on an outer surface of the container, a hot/cold gel within the container [Figure 1: (55a, 75); Column 2, Lines 24-28; Column 5, Lines 57-60], and a member removably positioned within the pocket [Column 5, Lines 45-65].

Patz does not specifically teach the said member having at least one light source capable of emitting therapeutic light.

Parker teaches a therapeutic light emitting panel [Column 7, Lines 38-41] being inserted into a pocket [Figures 7, 9; Column 7, Lines 15-21], wherein the light source for said panel may be light emitting diodes [Column 7, Lines 47-50].

It would have been obvious to one ordinarily skilled in the art at the time of invention to modify the therapeutic device of Patz to incorporate into said pocket the therapeutic light emitting panel of Parker in order to provide phototherapy to an injured area. Patz corroborates motivation, "Module openings 55a, 55b, and 55c can house a variety of objects such as traditional cooling packs (prior art) or in one embodiment a thermoelectric assembly 75, or various combinations of objects [Column 5, Lines 57-60]." Thus, a combination of cooling/heat packs, thermoelectric assembly, and/or phototherapy device would obviously and advantageously expedite the rehabilitation of a user.

Lastly, though Patz nor Parker specifically teaches a method for applying the therapeutic device to a user's body, it is considered an obvious teaching that one could implement a method of use when all structural elements of said claim are cited by the prior art.

4. With regards to Claim 2, Patz in view of Parker discloses the claimed invention as cited above. In addition, Patz teaches the injury pack holder/therapeutic device as a modular instrument capable of simultaneously providing for cooling and/or heating therapy to an injury, as well as the phototherapy device of Parker [see Abstract; Column 5, Lines 57-60].

5. With regard to Claims 5-6, Patz in view of Parker discloses the claimed invention as cited above. In addition, it is obvious that Parker teaches the light emitting panel being removable/insertable within a pocket [Figures 7, 9], and the therapeutic device of

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Patz providing hot/cold treatment to a gel pack [see Abstract], the combination of which may be determined according to a user's preference prior to therapy.

6. With regards to Claim 7, Patz in view of Parker discloses the claimed invention as cited above. In addition, it is considered an obvious matter that a user when applying therapeutic light may activate the light emitting panel/light source of Parker.

7. With regards to Claim 8, Patz in view of Parker discloses the claimed invention as cited above. In addition, Patz teaches an attachment device [Figure 1: (70a-c)] when applying/attaching the therapeutic device to a user's body.

8. Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patz et al. (U.S. Patent 5800490) in view of Parker et al. (U.S. Patent 5568964) as applied to Claim 1 above, and further in view of Schwartz et al. (U.S. Publication 2001/0052153).

9. With regards to Claim 3, Patz in view of Parker discloses the claimed invention as cited above, but does not specifically teach a massager, which may be activated and applied to the user's body.

Schwartz teaches a massager [Figure 1: (50a-b)] activated and applied to a user's body [see Abstract].

It would have been obvious to one ordinarily skilled in the art at the time of invention to modify the therapeutic device of Patz in view of Parker to incorporate into said pocket the massager of Schwartz in order to provide a soothing and relaxed massage to an injured area. Patz corroborates motivation, "Module openings 55a, 55b, and 55c can house a variety of objects such as traditional cooling packs (prior art) or in one embodiment a thermoelectric assembly 75, or various combinations of objects

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[Column 5, Lines 57-60].” Thus, a combination of cooling/heat packs, thermoelectric assembly, phototherapy device, and/or a massager would obviously and advantageously expedite the rehabilitation of a user.

10. With regards to Claim 4, Patz in view of Parker, and further in view of Schwartz discloses the claimed invention as cited above. In addition, Patz teaches, “Module openings 55a, 55b, and 55c can house a variety of objects such as traditional cooling packs (prior art) or in one embodiment a thermoelectric assembly 75, or various combinations of objects [Column 5, Lines 57-60].” Thus, a simultaneous combination of cooling/heat packs, thermoelectric assembly, phototherapy, and/or massaging would obviously and advantageously expedite the rehabilitation of a user.

11. Claims 9-10, 14, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patz et al. (U.S. Patent 5800490) in view of Parker et al. (U.S. Patent 5568964).

12. With regard to Claims 9 and 14, Patz discloses a therapeutic device including a container [Figure 1: (20, 55a)] having a pocket [Figure 1: (55b, 60)] on an outer surface thereof, a non-electrical agent within the container for applying at least one of heat/cold therapy [Figure 1: (55a, 75); Column 2, Lines 24-28; Column 5, Lines 57-60], and a member sized/positioned within the pocket [Column 5, Lines 45-65].

Patz does not specifically teach the said member having at least one light source (re: Claim 9), nor a plurality of LEDs (re: Claim 14), capable of emitting therapeutic light.

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Parker teaches a therapeutic light emitting panel [Column 7, Lines 38-41] being inserted into a pocket [Figures 7, 9; Column 7, Lines 15-21], wherein the light source for said panel may be light emitting diodes [Column 7, Lines 47-50].

It would have been obvious to one ordinarily skilled in the art at the time of invention to modify the therapeutic device of Patz to incorporate into said pocket the therapeutic light emitting panel of Parker in order to provide phototherapy to an injured area. Patz corroborates motivation, "Module openings 55a, 55b, and 55c can house a variety of objects such as traditional cooling packs (prior art) or in one embodiment a thermoelectric assembly 75, or various combinations of objects [Column 5, Lines 57-60]." Thus, a combination of cooling/heat packs, thermoelectric assembly, and/or phototherapy device would obviously and advantageously expedite the rehabilitation of a user.

13. With regards to Claim 10, Patz in view of Parker discloses the claimed invention as cited above. In addition, Patz teaches therapeutic heat and cooling gel packs (i.e., "Hot N'Cold") [Column 2, Lines 24-28].

14. With regards to Claim 19, Patz in view of Parker discloses the claimed invention as cited above. In addition, Patz teaches an attachment device [Figure 1: (70a-c)] when applying/attaching the therapeutic device to a user's body.

15. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Patz et al. (U.S. Patent 5800490) in view of Parker et al. (U.S. Patent 5568964) as applied to Claim 1 above, and further in view of Schwartz et al. (U.S. Publication 2001/0052153).

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Patz in view of Parker discloses the claimed invention as cited above, but does not specifically teach a massager coupled to the container.

Schwartz teaches a massager [Figure 1: (50a-b)] coupled to a container [see Abstract].

It would have been obvious to one ordinarily skilled in the art at the time of invention to modify the therapeutic device of Patz in view of Parker to incorporate into said pocket the massager of Schwartz in order to provide a soothing and relaxed massage to an injured area. Patz corroborates motivation, "Module openings 55a, 55b, and 55c can house a variety of objects such as traditional cooling packs (prior art) or in one embodiment a thermoelectric assembly 75, or various combinations of objects [Column 5, Lines 57-60]." Thus, a combination of cooling/heat packs, thermoelectric assembly, phototherapy device, and/or a massager would obviously and advantageously expedite the rehabilitation of a user.

16. Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patz et al. (U.S. Patent 5800490) in view of Parker et al. (U.S. Patent 5568964) as applied to Claim 9 above, and further in view of Altshuler et al. (U.S. Publication 2004/0093042).

Patz in view of Parker discloses the claimed invention as cited above, but does not specifically teach the light source emitting infrared or near infrared light (re: Claim 12), nor said light source emitting light having a wavelength within a range of about 680 nanometers and about 880 nanometers (re: Claim 13).

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Altshuler teaches, "Energy source 1 may produce electromagnetic radiation, such as near infrared or visibly light radiation over a broad spectrum, over a limited spectrum or at a single wavelength, such as would be produced by a light emitting diode or a laser [Page 4, Paragraph 45]." In addition, Altshuler teaches a light source that emits light having a wavelength of about 680 nanometers, as well as about 880 nanometers, depending upon certain depths of tissue and the desired therapeutic effect [Claims 10-11; Table 1].

It would have been obvious to one ordinarily skilled in the art at the time of invention to modify the therapeutic device of Patz in view of Parker to incorporate the infrared or near infrared (as well as a light emission range of 680 to 880 nanometers) light source of Altshuler in order to enhance therapeutic effect on a user, whereby it has been found that the modulation of infrared energy at relatively low frequencies, typically in the sonic or sub-sonic range, can provide improved remedial effects for an IR therapy device.

17. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Patz et al. (U.S. Patent 5800490) in view of Parker et al. (U.S. Patent 5568964) as applied to Claim 9 above, and further in view of Prescott (U.S. Patent 5616140).

Patz in view of Parker discloses the claimed invention as cited above, but does not specifically teach the container having at least one externally flexible portion coupled to a switching device such that movement of the flexible portions connects the light source to a power source.

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Prescott teaches, "The power supply and control circuit 26, the operation of which may be initiated by means of a single-pole, double-throw or pressure switch 15, provides power and timing control for operation of the lasers and the hyper-red LEDs [Figure 1: (15); Column 5, Lines 63-66; underline added by examiner for emphasis]."

It would have been obvious to one ordinarily skilled in the art at the time of invention to modify the therapeutic device of Patz in view of Parker to incorporate the pressure switch with an external flexible portion of Prescott in order to provide a user greater flexibility with respect to operation, whereby illumination may be easily turned on/off at a user's will.

18. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Patz et al. (U.S. Patent 5800490) in view of Parker et al. (U.S. Patent 5568964) as applied to Claim 19 above, and further in view of Prescott (U.S. Patent 5616140).

Patz in view of Parker discloses the claimed invention as cited above, but does not specifically teach the attachment device including an adhesive bandage strip coupled to the container.

Prescott teaches a container [Figure 6: (610)] including an adhesive strip to attach to a user's body [Column 12, Lines 1-4].

It would have been obvious to one ordinarily skilled in the art at the time of invention to modify the therapeutic device of Patz in view of Parker, and more specifically the attachment device, to incorporate the adhesive strip of Prescott to ensure a strong connection between the device and user's body.

19. Claims 21 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams et al. (U.S. Publication 2004/0039428) in view of Pyrozyk et al. (U.S. Patent 5431622).

20. With regards to Claim 21, Williams discloses a therapeutic device including at least one light source [Figure 1: (4)] for emitting therapeutic light, as well as a gel pack [Figure 1: (2, 20); Page 2, Paragraph 32].

Williams does not specifically teach said gel pack being a hot/cold gel pack, nor an adhesive bandage strip for attaching the device to a user's body.

Pyrozyk teaches a thermal bandage incorporating a hot/cold gel pack [Figure 1: (36); Column 4, Lines 52-54] and having adhesive means [Figure 1: (42, 44)] to attach said bandage to a user's body.

It would have been obvious to one ordinarily skilled in the art at the time of invention to modify the therapeutic device of Williams to incorporate the adhesive bandage strip of Pyrozyk to ensure a strong connection between the device and user's body. In addition, it would have been further advantageous to incorporate the hot/cold gel pack of Pyrozyk, since, "The bandage permits the wound to be dressed while at the same time applying heat or cold, all in a single step. Therefore, a wounded patient can be tended to much quicker than with conventional methods which require the use of a separate wound dressing and hot/cold compress wrapping [Column 3, Lines 59-64]." Williams corroborates such motivation [Pages 2-3, Paragraph 39].

21. With regards to Claim 24, Williams in view of Pyrozyk discloses the claimed invention as cited above. In addition, Williams teaches the light source including at least one LED [Page 2, Paragraph 29].

22. Claims 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams et al. (U.S. Publication 2004/0039428) in view of Pyrozyk et al. (U.S. Patent 5431622) as applied to Claim 21 above, and further in view of Altshuler et al. (U.S. Publication 2004/0093042).

Williams in view of Pyrozyk discloses the claimed invention as cited above, but does not specifically teach the light source emitting infrared or near infrared light (re: Claim 22), nor said light source emitting light having a wavelength within a range of about 680 nanometers and about 880 nanometers (re: Claim 23).

Altshuler teaches, "Energy source 1 may produce electromagnetic radiation, such as near infrared or visibly light radiation over a broad spectrum, over a limited spectrum or at a single wavelength, such as would be produced by a light emitting diode or a laser [Page 4, Paragraph 45]." In addition, Altshuler teaches a light source that emits light having a wavelength of about 680 nanometers, as well as about 880 nanometers, depending upon certain depths of tissue and the desired therapeutic effect [Claims 10-11; Table 1].

It would have been obvious to one ordinarily skilled in the art at the time of invention to modify the therapeutic device of Williams in view of Pyrozyk to incorporate the infrared or near infrared (as well as a light emission range of 680 to 880 nanometers) light source of Altshuler in order to enhance therapeutic effect on a user,

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whereby it has been found that the modulation of infrared energy at relatively low frequencies, typically in the sonic or sub-sonic range, can provide improved remedial effects for an IR therapy device.

23. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Patz et al. (U.S. Patent 5800490) in view of Parker et al. (U.S. Patent 5568964) as applied to Claim 1 above, and further in view of Altshuler et al. (U.S. Publication 2004/0093042).

Patz in view of Parker discloses the claimed invention as cited above, but does not specifically teach the light emitting diodes producing light at two or more different wavelengths including 680 nanometers, 730 nanometers, and 880 nanometers.

Altshuler teaches, "said source is at least primarily at one or more wavelengths between about 600 nm and about 1850 nm [Claim 10]."

It would have been obvious to one ordinarily skilled in the art at the time of invention to modify the therapeutic device of Patz in view of Parker to incorporate the light emitting diodes to selectively emit light at wavelengths of 680, 730, and/or 880 nanometers, as taught by Altshuler, so as to enhance therapeutic effect on a user, whereby, "Certain wavelengths may be preferentially absorbed by the tissue to be treated [see Altshuler: Page 4, Paragraph 47]."

24. Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Patz et al. (U.S. Patent 5800490) in view of Parker et al. (U.S. Patent 5568964) as applied to Claim 9 above, and further in view of Yamashita et al. (U.S. Patent 3976049).

Patz in view of Parker discloses the claimed invention as cited above, but does not specifically teach the device being packaged in a vacuum-sealed package, and

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wherein the non-electrical agent is configured to generate one of heat or cold when the package is opened thereby exposing the device to air.

Yamashita teaches, "In the structure of the warmer of the present invention, when the sealing part 19 of the air-tight envelope 15 provided with a sealing means is released, an opening part 18 is opened and the warmer T is taken out, outside air flows in the heat-generating composition 10 through aeration holes 17 for the composition and inner bag 11 inside the warmer T, and heat-generation is immediately initiated. When interruption of heat-generation is desired, all that is required is to return the contents into the air-tight envelope [Column 6, Lines 9-19]."

It would have been obvious to one ordinarily skilled in the art at the time of invention to modify the therapeutic device of Patz in view of Parker to incorporate the heat-generation means via air exposure, as taught by Yamashita, in order to provide a controlled means for generating heat for the therapeutic device as desired by a user.

25. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Patz et al. (U.S. Patent 5800490) in view of Parker et al. (U.S. Patent 5568964) as applied to Claim 9 above, and further in view of Altshuler et al. (U.S. Publication 2004/0093042).

Patz in view of Parker discloses the claimed invention as cited above, but does not specifically teach the light emitting diodes producing light at two or more different wavelengths including 680 nanometers, 730 nanometers, and 880 nanometers.

Altshuler teaches, "said source is at least primarily at one or more wavelengths between about 600 nm and about 1850 nm [Claim 10]."

It would have been obvious to one ordinarily skilled in the art at the time of invention to modify the therapeutic device of Patz in view of Parker to incorporate the light emitting diodes to selectively emit light at wavelengths of 680, 730, and/or 880 nanometers, as taught by Altshuler, so as to enhance therapeutic effect on a user, whereby, "Certain wavelengths may be preferentially absorbed by the tissue to be treated [see Altshuler: Page 4, Paragraph 47]."

26. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Williams et al. (U.S. Publication 2004/0039428) in view of Pyrozyk et al. (U.S. Patent 5431622) as applied to Claim 21 above, and further in view of Altshuler et al. (U.S. Publication 2004/0093042).

Williams in view of Pyrozyk discloses the claimed invention as cited above. In addition, Williams teaches the light source including a plurality of LEDs [Page 2, Paragraph 29], but neither Williams nor Pyrozyk specifically teaches the light emitting diodes producing light at two or more different wavelengths including 680 nanometers, 730 nanometers, and 880 nanometers.

Altshuler teaches, "said source is at least primarily at one or more wavelengths between about 600 nm and about 1850 nm [Claim 10]."

It would have been obvious to one ordinarily skilled in the art at the time of invention to modify the therapeutic device of Williams in view Pyrozyk to incorporate the light emitting diodes to selectively emit light at wavelengths of 680, 730, and/or 880 nanometers, as taught by Altshuler, so as to enhance therapeutic effect on a user,

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whereby, "Certain wavelengths may be preferentially absorbed by the tissue to be treated [see Altshuler: Page 4, Paragraph 47]."

Election/Restrictions

27. Newly submitted Claims 39-47 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The new set of claims are focused on an invention with multiple containers, wherein different chemical agents in each container are mixed in response to breaking, so as to provide a chemiluminescent light source. On the other hand, the previous set of claims is focused on a therapeutic lighting device utilizing light emitting diodes as the light source.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, Claims 39-47 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason M. Han whose telephone number is (571) 272-2207. The examiner can normally be reached on 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JMH (7/25/2005)


Stephen Husar
Primary Examiner